IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1200 of 1990

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHAVDA BHARTHAJI JIVAJI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1200 of 1990

MR MC BHATT for Petitioner No. 1

MR KT DAVE, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-2

RULE SERVED for Respondent No. 3

MR JAL UNWALA for MR PK JANI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India, challenging the order passed by the Additional Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 19.8.1999, thereby allowing the same by quashing and setting aside the order passed by the Deputy Collector and Collector, and by cancelling the entry No. 1007 which was in favour of the petitioner.

By mutation entry No. 1007 dated 26.9.1975 with regard to the land bearing survey No. 226 situated at village Ambod, Tal. Vijapur, Dist Mehsana, name of the petitioner was entered into and the said entry was also certified by the Circle Officer, Mansa by order dated 9.12.1975. It is pertinent to note that the said entry was effected pursuant to and on the basis of measurement of the land in question.

It seems that the respondent No.4, after a period of about 11 years, raised a dispute challenging the validity of entry No. 1007 dated 26.9.1975, which was certified on 9.12.1975, by way of an appeal before the Deputy Collector, Mehsana on 13.2.1985. The Deputy Collector, Mehsana, by the judgement and order dated 11.2.1986, dismissed the said appeal as having time barred. Being aggrieved and dis-satisfied by the same, respondent No.4 preferred an appeal before the Collector, Mehsana and the Collector, Mehsana also by his order dated 30.6.1986, dismissed the said Revision Application confirming the order passed by the Deputy Collector.

Being aggrieved and dis-satisfied with the aforesaid two orders passed by the Deputy Collector, Mehsana dated 11.2.1986 and order passed by the Collector, Mehsana dated 30.6.1986, in not cancelling the entry No. 1007, the respondent No.4 preferred Revision Application before the learned Special Secretary (Appeals), Revenue Department and the learned Special Secretary (Appeals), Revenue Department, by judgement and order dated 19th August, 1989 allowed the said Revision Application, quashing and setting aside the order passed by the Deputy Collector, Mehsana and Collector, Mehsana, by further quashing and setting aside the entry No. 1007 with regard to the land bearing survey No.226, situated at village Ambod, Tal. Vijapur, Dist. Mehsana.

It is against the aforesaid judgement and order passed by the revisional authority i.e. learned Special Secretary (Appeals) that the petitioner has preferred the present petition under Article 226 of the Constitution of India.

Shri M.C. Bhatt, learned Advocate appearing on behalf of the petitioner has vehemently submitted that the revisional authority i.e. learned Special Secretary (Appeals) has materially erred in allowing the said revision application and quashing and setting aside the orders passed by the Deputy Collector and Collector, Mehsana, by which aforesaid two authorities have declined to interfere and quash and set aside entry which was challenged after a period of 11 years. For that proposition, he has relied upon the judgement in the case of Raghavnatha Vs. State, reported in 10 GLR 992, by contending that the question with regard to entry can be raised within a reasonable time. In the present case, as the entry was challenged after a period of 11 years, the Deputy Collector as well as the Collector, Mehsana were justified in not rejecting the appeal preferred by the respondent No.4 and not in quashing and setting aside entry No. 1007. Shri Bhatt has also submitted that even otherwise on merits also the learned Special Secretary has materially erred in quashing and setting aside entry No. 1007. While cancelling the entry No. 1007, the revisional authority i.e. Special Secretary has held that there is likelihood of breach of the provisions of the Bombay Prevention of Fragmentation Act, and the prior permission of the Collector was not obtained. Shri Bhatt has also submitted that as such Civil Suit was already filed by the respondent No.4 against the petitioner, which was withdrawn and in that view of the matter, the learned Special Secretary was not justified in setting aside the entry No. 1007 and therefore, he requested to allow the present Special Civil Application.

Shri Jal Unwalla, appearing on behalf of the respondent No.4 has tried to support the judgement and order passed by the learned Special Secretary. He has submitted that the revisional authority i.e. learned Special Secretary has rightly held that the limitation is to be counted from the date of knowledge and therefore, rightly exercised the power and rightly quashed and set aside the order passed by the Deputy Collector as well as the Collector.

I have heard the learned Advocates appearing for the parties. The present Special Civil Application is required to be allowed only on the ground of limitation. It is found from the record that entry No. 1007 was effected on 26.9.1975 and the same was certified by the Circle Officer, Mansa on 9.12.1975. It is an admitted position that the said entry was challenged for the first time before the Deputy Collector, Mehsana on 13.2.1985

i.e. almost after a period of 10 years. Considering the aforesaid judgements cited on behalf of the petitioner, and applying the same analogy, the learned Special Secretary was not justified in quashing and setting aside the entry No. 1007, which was challenged after a period of more than 10 years. The Deputy Collector as well as the Collector, Mehsana were justified in not entertaining the appeal preferred by the respondent No.4, in which the validity of entry No. 1007 was challenged. In view of the fact that the entry was not challenged within a period of reasonable time, i.e. more particularly in view of the fact that it was challenged after a period of about 10 years, the Special Secretary was not justified in allowing the Revision Application and setting aside the entry No.1007 which was effected in the year 1975 and which was challenged for the first time in the year 1985. In view of the aforesaid facts and on the aforesaid ground alone, more particularly in view of the fact that Civil Suit filed by the respondent No.4 against the petitioner was subsequently withdrawn, the order passed by the learned Special Secretary is required to be quashed and set aside and is hereby quashed and set aside. The order passed by the Deputy Secretary, Mehsana dated 11.2.1986 and also the order passed by the Collector, Mehsana dated 30.6.1986 and entry No. 1007 with regard to the land bearing survey No. 226 situated at village Ambod, Tal. Vijapur, Dist. Mehsana are hereby restored. Rule is made absolute with no order as to costs.

(M.R. Shah. J.)

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